Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Creation of Interstitial 12.5 Kilohertz Channels in the 800 MHz Band Between 809-817/854-862 MHz	)	WP Docket No. 15-32
	)	RM-11572
	)	
	)	
Amendment of Part 90 of the Commission's Rules to Improve Access to Private Land Mobile Radio Spectrum	)	WP Docket No. 16-261
	)	
	)	
Land Mobile Communications Council Petition for Rulemaking Regarding Interim Eligibility for 800 MHz Expansion Band and Guard Band Frequencies	)	RM-11719
	)	
	)	
Petition for Rulemaking Regarding Conditional Licensing Authority	)	RM-11722
	)	
	)	

To: The Commission

PETITION FOR PARTIAL RECONSIDERATION

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Summary

The Monitoring Association ("TMA", formerly the Central Station Alarm Association) and its related Alarm Industry Communications Committee (collectively "TMA"), pursuant to Section 1.429 of the Commission's Rules, petitions for partial reconsideration of the Commission's Report and Order and Order, FCC 18-143, released October 22, 2018, in the above-captioned proceeding (the "Order"). In particular, TMA requests that the Commission reconsider that portion of the Order that modifies eligibility restrictions on the central station channels allocated for the sending of alarm signals as part of the Low Power Pool Group D frequencies. TMA demonstrated in the record that this small handful of channels are dedicated to sending safety of life and property messages, in direct cooperation with public safety; that the Group D frequencies are heavily used, and demand is growing due to the retirement of the copper phone network and rapid changes in cellular formats; that the licensing of non-central station operations, especially those allowing voice communications, can disrupt the timely delivery of alarm signals reporting fires, home invasions, medical alerts and other emergency situations; and that there was no demand demonstrated in the record for non-central station use of these channels. No party refuted these showings. Moreover, the record included an industry wide consensus, adopted through the Land Mobile Communications Council (LMCC), making the higher powered voice channels available for non-central station use while protecting the heavily used low power channels for alarm operations. It is respectfully submitted that the Order's modifications of the use restriction on the Group D channels creates the risk that frequencies needed for life safety alarm operations will be depleted in many markets by less urgent uses. Such outcome runs counter to clear and unrefuted evidence in the record, reaches beyond the scope of the original rule making proposal without adequate justification, and ignores less restrictive alternatives established in the record. TMA appreciates the protections crafted by the Order for central station frequencies in general, but urges the Commission to modify those protections to continue the eligibility restriction for the Group D channels.

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I. Statement of Interest

TMA was created in 1950 and represents the vast majority of entities providing central station alarm security protection services approved by Underwriters Laboratories, Factory Mutual and similar agencies, in the manner contemplated by Section 90.35(c) of the Commission's Rules. TMA members fulfill a fundamental spectrum use goal articulated by the Communications Act of 1934, as amended (the "Act"). These companies and associations are dedicated solely to "promoting the safety of life and property through the use of wire and radio communication." Central station alarm operations protect tens of millions of families in their homes; and they protect a wide range of businesses and government facilities. In this regard, central station alarm services often act as the "front line" in dispatching municipal police and fire units whose radio operations are part of the Public Safety Radio Service. Silent sentinels located on a customer's premises sense fire, home invasions, medical emergencies, carbon monoxide and other threats, and instantly transmit this data to a central station. The central station in turn screens the alarm and alerts the dispatch office of municipal authorities, usually police or fire departments, which then dispatch police officers, fire fighters, EMTs/paramedics and other first responders.

The frequencies allocated for central station use under Rule Sections 90.35 and 90.267 are used for sending alarm signals identifying emergency conditions, and sending responses to such alarms. In light of the important and specialized use of this spectrum by central stations, the Commission designated TMA as a frequency coordinator.

The related Alarm Industry Communications Committee, or AICC, is comprised of TMA, the Electronic Security Association (ESA), the Security Industry Association (SIA), the National Public Safety Telecommunications Council (NPSTC), Bosch Security Systems, Digital Monitoring Products, Digital Security Control, Telular Corp. , Honeywell Security, Vector Security, Inc., ADT LLC, AES- IntelliNet, Alarm.com, Bay Alarm, Intertek Testing, NetOne, iPDatatel, United Central Control, AFA Protective Systems, Vivint (formerly APX Alarm), COPS Monitoring, DGA Security, Security Central NC, Simplex Grinnell, Universal Atlantic Systems, Axis Communications, Interlogix, Napco Security, Alarm Detection Systems, ASG Security, Select Security/Security Partners, Inovonics, Linear Corp., Tyco Integrated Security, Tyco Security Products, FM Approvals, the Underwriters Laboratories (UL), CRN Wireless, LLC, Rapid Response Monitoring, Ackerman Security, ADS, Comcast, Nortek, Protection One, Stanley Security, Supreme Security Systems, Inc., and Wayne Alarm. Thus, every aspect of the alarm industry is well represented in AICC, including central stations, equipment manufacturers, alarm service dealers, and the Public Safety community.

TMA participated extensively in the proceeding below, as reflected in the Order.

II. Factual Background

Rule Section 90.35 allocates certain frequencies for use by central station alarm companies in providing monitoring and protection services. In particular, there are five pairs of higher powered “voice” channels, two of which are designated for central station operations nationwide, and three of which are designated for central station use only in certain urban areas. The higher powered voice channels were allocated primarily to facilitate dispatching armed guard responses to emergencies, communicating with security patrols, coordinating restoration of

service, and communicating with alarm installation and repair personnel. The advent of cellular has made communications with guards and other personnel possible by other means, and the high power central station voice channels for this purpose declined significantly.

In contrast, the handful of channels interleaved between the central station voice channels have been allocated for low power signaling, and are used to send alarm signals directly to the central station, identifying emergency situations such as fires, home invasions, dangerous levels of carbon monoxide, and medical alerts. The central station is thereby able to alert the Public Safety Answering Point (PSAP) and trigger a response by emergency personnel. This signaling is conducted via data communications, and the low power central station frequencies have been designated as Group D of the Low Power Pool, pursuant to Rule Section 90.267. Due to the need for such alarm signaling, the low power channels have been heavily used. While the central station voice channels could be used for data under Rule Section 90.35(c)(64), data was only allowed on a part time basis, with other significant restrictions, which prevented use of the voice channels for alarm signaling.

The Notice of Proposed Rulemaking

On August 18, 2016, the Commission released its *Notice of Proposed Rulemaking* ("NPRM") in WP Docket No. 16-261 (FCC 16-110), which primarily focused on petitions for rulemaking filed by LMCC, relating to rule changes for the 800 MHz band and the conditional temporary authority regulations. However, on its own motion, the Commission inquired about making changes to Rule Section 90.35. In particular, the NPRM (at para. 12) suggested that "[a] recent review of the Commission's Universal Licensing System suggests that these frequencies [designated for central station use] are currently underutilized." The Commission proposed "to modify Section 95.35(c)(63) to remove the use limitation in the urbanized areas where the urban frequencies are not in use."[1] In addition, the Commission sought "comment on other ways to expand PLMR users' access to frequencies that are designated, but no longer needed, for central station commercial protection services, including by making available channels in urbanized

[1] NPRM, *id* at para. 13.

areas where some of the urban frequencies are in use."[2] The NPRM posed related questions, such as "how many urban frequencies should continue to be set aside?"; and "[a]re the nationwide frequencies sufficient to meet demand . . .?"[3]

The Record:

In response to the proposal to ease restrictions on the urban central station channels posed in the NPRM, TMA's November 22, 2016 Comments in this proceeding established that the alarm industry is heavily using the Low Power Pool Group D central station frequencies to protect the safety of life and property, and that a number of factors show that this usage will increase substantially in the near future.[4] In particular, TMA's Comments demonstrated that:

- Central station alarm operations protect tens of millions of families in their homes; and they protect a wide range of sensitive facilities from fire, burglaries, sabotage and other emergencies, including government facilities, power plants, hospitals, dam and water authorities, pharmaceutical plants, chemical plants, schools/universities, and other critical facilities that could become the target of terrorist attacks as well as other life threatening events. Every alarm message sent over one of these frequencies indicates the detection of a fire, home invasion, excess carbon monoxide, or other condition that can threaten the safety of life and property.[5]

- The central stations in turn screen any alarms received, and alert the relevant PSAP so that they can send the appropriate first responders.[6]

- The use of alarm systems is on the rise, as persons and businesses are becoming more security conscious, and more prone to using smart home or business technology.[7]

[2] NPRM, *id* at para. 14.
[3] NPRM, Id.
[4] TMA Comments at 4 – 7.
[5] *Id.* at 2.
[6] *Id.*

- The use of wireless devices to relay alarm signals of all types to the central station is also significantly on the rise, based on information provided by AES Intellinet, one of the primary manufacturers of central station frequency equipment (27.92 percent growth in 2015 for fire detection radios) and the Alarm Industry Communications Committee 2016 Member Survey (use of wireless alarm devices has increased to approximately 57 percent in 2016, and is expected to rise further).[8]

- In light of more frequent shifts in technology by the cellular industry (i.e., from 2G to 3G to 4G LTE to 5G), several alarm companies are finding that it is necessary to use the dedicated central station channels allocated under Rule Section 90.35(c) to avoid recurring truck rolls to replace customer premise radios.[9]

- The rapid transition away from traditional telephone line technology means that approximately 58 percent of existing alarm connections (i.e., approximately 23 million alarm systems) must be converted to another medium over the next 7 to 10 years; and a significant number of these systems will be converted to a wireless connection, with many using the dedicated central station frequencies.[10]

- TMA provided the Declaration of Owais Hassan, P.E., Vice President of Engineering for AES Corp., establishing that alarm signaling and other types of PLMR communications are inherently incompatible with each other, and can be expected to suffer interference if the central station restriction is eliminated. Such interference can introduce significant delays into the transmission of alarm signals on the same or adjacent channels, thereby jeopardizing life and property.[11]

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[7] *Id.* at 3.
[8] *Id.* at 3 – 4.
[9] *Id.* at 4 – 6.
[10] *Id.* at 6 – 7.
[11] *Id.* at 14 – 15. *See also* Attachment C.

No facts were introduced into the record contradicting CSAA's above showings. No commenters demonstrated a need for the Group D frequencies beyond the availability of the 467 other Low Power Pool frequencies.

The LMCC Consensus Plan Approved by All Relevant Frequency Coordinators

During the comment cycle triggered by the NPRM, TMA and LMCC formulated a consensus plan ("Consensus Plan") for use of central station channels by other entities. At its December 8, 2016 meeting, LMCC voted to approve included this Plan, and included it with a recommendation for Commission adoption, in its December 22, 2016 Reply Comments. The Plan provided for access by non-central station operations to up to four of the five channel pairs (or eight of the ten voice frequencies if used separately) allocated for central station use. Thus, TMA and LMCC addressed the wishes voiced by commenters such as Mobile Relay Associates and NAM/MRFAC that availability of this spectrum as proposed by the Commission would help address channel congestion (and indeed, NAM/MRFAC has concurred in the LMCC Consensus Plan). In light of the heavy use of the low power central station channels for life safety communications, the Consensus Plan provided for such channels to remain restricted to central station use. Every relevant coordinator of Part 90 spectrum signed on to this Plan, and there were no objections among LMCC members. No commenter objected to the Consensus Plan once it was submitted into WP Docket No. 16-261 by LMCC.

The Order: On October 22, 2018, the FCC adopted the Order. Surprisingly, the FCC rejected the LMCC Consensus Plan that was agreed to by TMA and LMCC, despite support of this plan by every relevant frequency coordinator, representing virtually every industry that is a stakeholder in this matter, and despite the absence of any opposition to this plan in the record.

Instead, the Order (at para. 80) noted that the Commission had "surmised" in the NPRM that the need for central station frequencies had diminished due to the advent of new technologies. The Order then asserted that "the majority of commenters addressing the issue that central station channels should be made available for other uses", and agreed with this assertion. As a result, the Order (at para. 82) concluded that central station frequencies should instead be

placed under the regulatory scheme adopted for "critical infrastructure industries". In particular, the Order has made TMA the exclusive coordinator for the central station frequencies. Also, the FCC adopted TMA's proposal (also reflected in the LMCC Consensus Plan) that alarm signaling on the central station low power frequencies are co-primary with regard to co-channel or adjacent channel base, mobile or data operations. Further, the FCC adopted the proposal to allow alarm company use of the central station voice channels for signaling only operations.

The Order ultimately made not only the urban central station frequencies available to other entities, as proposed in the NPRM, but instead made all central station frequencies available for non-central station operations. With regard to the low power central station signaling channels, the Order acknowledged TMA's showing that these frequencies are heavily used; however, the Commission opened these frequencies for application by any applicant as well, observing (at fn. 198) that: "We expect relatively few requests for the non-primary channels, however, given that they already are heavily used for central station operations and there is no shortage of other low-power channels for which applicants will not need The Monitoring Association's concurrence."

III. The Rule Changes for Central Station Low Power Channels Should Be Revised to Account for an Important Aspect of the Problem Encountered by Alarm Service Providers, and to be Consistent with the Evidence in this Proceeding.

TMA appreciates the steps taken in the Order to offer at least some protection for alarm frequencies, such as TMA's appointment as the exclusive coordinator; and TMA agrees that this measure is an appropriate accommodation with regard to the central station voice channels. However, it is respectfully submitted that a different approach is necessary with regard to the Low Power central station channels.[12] In this regard, there appears to be a misconception underlying NPRM and Order that confounds the analysis of what changes are appropriate to Rule

[12] TMA supports the protections that the Commission has afforded to the Critical Infrastructure Industries with regard to frequency coordination, as these industries serve invaluable functions throughout the United States. With regard to the critical infrastructure analogy at para. 82 of the Order, TMA notes that central station use of the low power signaling channels is not a case where emergency messages can arise at times, mixed in with routine communications. Virtually all of the signals sent to the central station are reporting dangerous conditions such as fires, home invasions, or medical emergencies.

Section 90.35(c). In particular, the Order (at para. 80) describes the entire allocation of central station channels as follows: "Certain frequencies are reserved for the use of central station commercial protection services to maintain communications paths between alarm systems at customer premises and central station alarm monitoring centers." In fact, only the low power channels are currently used for signaling. The Order erroneously lumps the two groups of frequencies together for analysis purposes.

The Order goes on to state: "The Commission surmised that the need for these channels had diminished due to advances in other services and technologies that can be used to complete the communications path to the alarm service central office, such as cellular telephone, satellite communication services, and the Internet." *Id.* However, the need for the low power channels has *not* diminished.[13] As established in the record of this proceeding, they are heavily used, sending life and property safety messages.[14] The need for the voice channels diminished due to cellular, and because of the data restriction that has prevented use of these frequencies for transmission of alarm signals to the central station.

TMA is also concerned about the following conclusion in the Order (at para. 80): "We agree with the majority of commenters addressing the issue that central station channels should be made available for other uses." While the majority of commenters supported making the voice channels available, the same is not true of the low power central station channels. Instead, the majority of commenters is comprised of the TMA and the other Industrial/Business frequency coordinators appointed by the Commission, who each voted for and supported the LMCC consensus plan. This plan called for making most of the central station voice channels available to other entities, but supported retaining the central station-only restriction on the low power channels. Of the two commenters cited by the Order, NAM/MRFAC only focused its support for the urban channels as proposed in the NPRM; [15] then MRFAC signed on to the

[13] See TMA Comments at pp. 3-4, 6, 9-10.
[14] Since the filing of TMA's Comments in 2016, the installation of wireless alarm devices has continued to rise geometrically. The 2018 AICC Communications Survey reflects that on average, alarm companies are using wireless (from premises to the central station) on 76% on new installations during the last 12 months.
[15] NAM/MRFAC Comments at p. 4: ("NAM/MRFAC support the Notice's proposal to . . . consider possible liberalization of eligibility rules for *certain* UHF central station alarm frequencies which are currently underutilized" [Emphasis added]). Thus, NAM/MRFAC's comment was limited to the proposal concerning "certain" frequencies in the NPRM, i.e., the urban frequencies only.

consensus plan, which provided for the Group D low power channels to remain restricted. MRA likewise only addressed the central station urban channels governed by Section 90.35(c)(63),[16] and did not specifically address the Group D Low Power Pool channels; and the Commission can take official notice that MRA holds hundreds of licenses for high power land mobile voice operations, but a review of the Commission's records indicates that it holds only one Low Power Pool license. This license (Call Sign KB92186) was issued for one mobile unit before the Commission's ULS system was implemented, and has never been modified to add a second mobile. The Order (at fn. 189) quotes MRA's comment that "[t]he allocation of this spectrum to central station alarm service, over forty years ago, has been rendered completely obsolete by changes in technology. Currently, this spectrum is lying fallow and completely underutilized." However, this statement has been demonstrated inaccurate as applied to the low power central station channels, which the Commission acknowledges are "heavily used" in fn. 198. MRA did not oppose consensus plan, and MRA's history as a licensee indicates that its statement was understandably directed to gaining access to the underutilized voice channels.

The Order (at fn. 190) carries these misinterpretations of the record over to its dismissal of the carefully crafted LMCC Consensus Plan, in a footnote: "*For the reasons set forth above,* however, we continue to believe that even this level of designated exclusive use of the subject channels is unnecessary, and we decline to adopt the proposed joint plan." [Emphasis added] The Consensus Plan would have created an avenue for access to all but one voice channel pair for non-central station applicants in each area. The only "reasons set forth above" in the Order focused on underutilization of spectrum. Again, the underutilization aspect does not apply to the low power channels.

The Order's rationale for making the low power central station channels available for non-central station entities is contained in fn. 198: "We extend this approach to both the primary and non-primary channels. We expect relatively few requests for the non-primary channels, however, given that they already are heavily used for central station operations and there is no shortage of other low-power channels for which applicants will not need The Monitoring Association's concurrence." Thus, the Order recognized that the low power channels do not fit

[16] MRA Comments at p. 9.

into the “underutilization” premise of the rulemaking, yet does not offer a public interest reason for lumping these frequencies in with the voice channels. Instead, fn. 198 relies on a belief that the rule change is appropriate for the low power channels because such outcome may not go badly. TMA hopes that this will indeed be the case. But as shown by the TMA’s comments, in several markets, only 1 to 3 low power channels remain available.[17] TMA must concern itself not only with interference but also with depletion/unavailability of signaling channels.

In reaching a decision, an agency must have examined the relevant data and articulated a satisfactory explanation for its action, including a "rational connection between the facts found and the choice made." *Id.* (*quoting Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168, 9 L. Ed. 2d 207, 83 S. Ct. 239 (1962)). A court will normally find fault with an agency rule where the agency entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise. *Id.* (*citing SEC v. Chenery Corp.*, 332 U.S. 194, 196, 91 L. Ed. 1995, 67 S. Ct. 1575 (1947)); *see also Robert Wood Johnson Univ. Hosp. v. Thompson*, 297 F.3d 273, 280 (3d Cir. 2002). Put another way, a court will reverse an agency's decision when it "is not supported by substantial evidence, or the agency has made a clear error in judgment." *AT&T Corp. v. FCC*, 343 U.S. App. D.C. 23, 220 F.3d 607, 616 (D.C. Cir. 2000) (*citing Kisser v. Cisneros*, 304 U.S. App. D.C. 317, 14 F.3d 615, 619 (D.C. Cir. 1994)). A reviewing court must ensure that, in reaching its decision, the agency examined the relevant data and articulated a satisfactory explanation for its action, including a rational connection between the facts found and the choice made. *Prometheus Radio Project v. FCC*, 373 F.3d 372; 2004 U.S. App. LEXIS 12720 (3rd Cir. 2004).

It is respectfully submitted that the Order did not give adequate consideration to important aspects of the problem facing the alarm industry’s need for dedicated central station signaling frequencies; and that the Order (particularly at fn. 198) offers an explanation that runs counter to evidence in the record that (1) the central station low power channels are heavily used and thus do not fit into the premise of the proposed rule changes, (2) the need for these channels

[17] TMA Comments at p. 9.

is increasing, (3) the communications sent over these channels do not incidentally and occasionally concern safety situations, but rather primarily report life safety situations that often result in the dispatch of first responders, and (4) in many markets, even a few applications for these frequencies by non-central station entities will exhaust the signaling channels needed for future alarm operations. TMA appreciates that it will have a concurrence right under the Commission's revisions to the central station channel rules. However, because revised Rule Section 90.175 places limits on TMA's ability to refuse concurrence, this right may not prevent depletion of the limited number of low power channels that are vital for sending signals reporting fires, home invasions, dangerous carbon monoxide levels and other medical emergencies.

IV. The Order Goes Beyond the Scope of the Rulemaking, with Regard to the Low Power Channels.

It is respectfully submitted that, with regard to the central station low power channels, the Order exceeds the scope of this proceeding. First, the NPRM focused only on making the *urban* central station channels available to other entities, not *all* of the central station frequencies. In particular, the NPRM proposed "to modify Section 95.35(c)(63) to remove the use limitation in the urbanized areas where the *urban* frequencies are not in use."[18] Also, the NPRM sought "comment on other ways to expand PLMR users' access to frequencies that are designated, *but no longer needed*, for central station commercial protection services, including by making available channels *in urbanized areas* where some of the urban frequencies are in use."[19] The NPRM posed related questions, such as "how many *urban* frequencies should continue to be set aside?"; and "[a]re the nationwide frequencies sufficient to meet demand?"[20]

Federal courts have held that the APA notice requirements are satisfied where the final rule is a "logical outgrowth" of the proposed rule. A rule is a logical outgrowth of a Notice if "[the party] should have anticipated that such a requirement might be imposed." *See Provision of Aeronautical Services via the Inmarsat System – Aeronautical Radio, Inc. and the Air Transport Association of America Request for Waiver*, Order on Reconsideration and Further

[18] NPRM, *id* at para. 13 [Emphasis added].
[19] NPRM, *id* at para. 14 [Emphasis added].
[20] NPRM, *id* [Emphasis added].

Notice of Proposed Rulemaking, 11 FCC Rcd. 5330 at 5336, *citing Small Refiner Lead Phase-Down v. EPA*, 705 F. 2d 506, 549 (DC Cir. 1983). In order to meet this standard, it has been held that the agency's notice and the public's comments must pass the "reasonable specificity" test. This standard can be stated as whether a reasonable person would be put on notice of the final rule. *See 1998 Regulatory Review, Order on Reconsideration*, 15 FCC Rcd. 9707 at 9710, *citing Small Refiner Lead Phase-Down v. EPA*,705 F. 2d at 549; *LaMadrid v. Hegstrom*, 830 F. 2d 1524, 1530-31 (9th Cir. 1987); *and The Logical Outgrowth Doctrine in Rulemaking*, Phillip M. Kannan, 48 Admin. Law Review, Spring 1996, at 213. As the Court of Appeals for the District of Columbia Circuit has put it:

> Notice requirements are designed (1) to ensure that agency regulations are tested via exposure to diverse public comment, (2) to ensure fairness to affected parties, and (3) to give affected parties an opportunity to develop evidence in the record to support their objections to the rule and thereby enhance the quality of judicial review. While an agency may promulgate final rules that differ from the proposed rule, a final rule is a logical outgrowth of a proposed rule only if interested parties should have anticipated that the change was possible, and thus reasonably should have filed their comments on the subject during the notice-and-comment period[.]

Council Tree Communs., Inc. v. FCC, 619 F.3d 235, 250 (D.C.Cir. 2010) *citing Int'l Union, United Mine Workers v. Mine Safety & Health Admin.*, 407 F.3d 1250, 1259-60, 366 U.S. App. D.C. 54 (D.C. Cir. 2005) (internal quotation marks, brackets, and citations omitted).

A reasonable person was not put on notice that *all* of the central station channels were to be made available to non-central station applicants. As shown above, the NPRM proposed changing eligibility standards for the urban channels only. In fact, the NPRM (at para. 14) directs: "Commenters also should address the current and expected future need for central station commercial protection service channels in the 460-470 MHz band. For example, in the areas where some frequencies are in use, how many *urban* frequencies should continue to be set aside? Are the nationwide frequencies sufficient to meet demand, *without any urban frequencies*?" [Emphasis added] This instruction can only be interpreted as meaning that at a minimum, the nationwide frequencies would remain restricted to central station use only, and the question on the table was whether some of the urban channels should remain restricted as well. Importantly, the NPRM (at Appendix A) showed proposed revisions to Rule Section 90.35(c)(63), which

governs the urban central station channels; but it did not show proposed amendments to Rule Section 90.35(c)(66), which governs the nationwide central station channels.

Moreover, the NPRM (at para. 14) sought "comment on other ways to expand PLMR users' access to frequencies that are designated, *but no longer needed*, for central station commercial protection services, . . ." As shown in TMA's Comments, and recognized by the Order at fn. 198, the low power central station channels do not fall into the category of frequencies that are "no longer needed." Again, a reasonable person would not conclude that the low power channels would be subject to the proposed rule changes, especially in the face of a showing that these channels were heavily used.

V. The Order Failed to Consider Less Restrictive Alternatives in the Record.

Agencies must consider significant or important alternatives, including alternatives that "appear[] to serve precisely the agency's purported goals," *Office of Communication of the United Church of Christ v. FCC*, 779 F.2d 702, 713-14 (D.C. Cir. 1985), those that are "plausible," *Qwest Communications Int'l, Inc. v. FCC*, 229 F.3d 1172, 1183 (2000), and those that represent "less restrictive, yet easily administered" measures, *Cincinnati Bell Telephone Co. v. FCC*, 69 F.3d 752, 761 (6th Cir. 1995). *See also Jacob Siegel Co. v. FTC*, 327 US 608 (1946)(remanding case in which FTC ordered company to abandon allegedly deceptive brand name but did not reasonably consider whether a less restrictive alternative method would suffice).

The LMCC Consensus Plan offered the Commission a less restrictive alternative that would have satisfied its objective of increasing use of those channels that have become underutilized, while protecting the heavily used low power frequencies that are utilized to send life safety messages on a daily basis. Moreover, the Consensus Plan could have been tweaked to include availability of all of the voice channels, as done in the Order, without affecting the low power channels; and indeed, this option was proposed to the Commission in TMA's October 16, 2018 Ex Parte presentation. The approach suggested in this Ex Parte can be easily administered. It is respectfully submitted that this less restrictive alternative (shown in Attachment A hereto) would best serve the public interest by invigorating use of the frequencies identified by the

Commission as underutilized (thereby satisfying demand for more higher powered voice channels) while at the same time protecting the means by which alarm companies send life safety communications, the demand for which is demonstrated to be growing.

Conclusion

For the reasons set forth above, the Commission should maintain the central station restriction on the Low Power Pool Group D central station channels. It is requested that the Commission revise the affected rule provisions as shown in Attachment A hereto.

Respectfully submitted,

THE MONITORING ASSOCIATION

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ATTACHMENT A: PROPOSED REVISIONS TO CENTRAL STATION FREQUENCY RULES

Proposed Changes on Reconsideration (redlined version):

90.35(c):

(63) ~~Unless concurrence is obtained in accordance with section 90.175(b) of this chapter from the Commission-certified frequency coordinator for frequencies designated for central station alarm operations (central station alarm frequency coordinator), t~~This frequency may be used within the boundaries of urbanized areas of 200,000 or more population, defined in the United States Census of Population, 1960, vol. 1, table 23, page 1-50, only by persons rendering a central station commercial protection service within the service area of the radio station using the frequency and may be used only for communications pertaining to safety of life and property, and for maintenance or testing of the protection facilities. Central station commercial protection service is defined as an electrical protection and supervisory service rendered to the public from and by a central station accepted and certified by one or more of the recognized rating agencies, or the Underwriters Laboratories' (UL), or Factory Mutual System. Other stations in the Industrial/Business Pool may be licensed on this frequency without ~~the central station alarm frequency coordinator's~~ concurrence from the Commission-certified frequency coordinator for frequencies designated for central station alarm operations (central station alarm frequency coordinator),only when all base, mobile relay and control stations are located at least 120 km (75 miles) from the city center or centers of the specified urban areas of 200,000 or more population. With respect to combination urbanized areas containing more than one city, 120 km (75 mile) separation shall be maintained from each city center which is included in the urbanized area. The locations of centers of cities are determined from appendix, page 226, of the U.S. Commerce publication "Air Line Distance Between Cities in the United States." If concurrence is obtained in accordance with section 90.175(b) of this chapter from the central station alarm frequency coordinator, other stations in the Industrial/Business Pool may be licensed on the following frequencies at locations less than 120 km (75 miles) from the city center or centers of the specified urban areas of 200,000 or more population: 460.900, 465.900, 460.925, 465.925, 460.950, 465.950 MHz,

(64) Persons who render a central station commercial protection service are authorized to operate fixed stations on this frequency for the transmission of tone or impulse signals on a co-primary basis to base/mobile operations. Fixed stations may be licensed as mobiles. Fixed stations used for central station alarm operations may use antennas mounted not more than 6.1 meters (20 feet) above a man-made supporting structure, including antenna structure.

* * *

(66) ~~Unless concurrence is obtained in accordance with section 90.175(b) of this chapter from the Commission-certified frequency coordinator for frequencies designated for central station alarm operations, t~~This frequency may be assigned only to persons rendering a central station commercial protection service, which is defined in paragraph (c)(63) of this section, within the service area of the radio station using the frequency. If concurrence is obtained in accordance with section 90.175(b) of this chapter from the central station alarm frequency coordinator, other stations in the Industrial/Business Pool may be licensed on the following frequencies: 460.975, 465.975, 461.000, 466.000 MHz.

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§ 90.175 Frequency coordinator requirements.

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(b) * * * (1) A statement is required from the applicable frequency coordinator as specified in §§ 90.20(c)(2) and 90.35(b) recommending the most appropriate frequency. In addition, for central station frequencies ~~to~~on which other stations in the Industrial/Business Pool may be licensed pursuant to § 90.35(c)(63) or (66)~~ is applicable~~, the written concurrence of the Commission-certified frequency coordinator for frequencies designated for central station alarm operations must be obtained. In addition, for frequencies above 150 MHz, if the interference contour of a proposed station would overlap the service contour of a station on a frequency formerly shared prior to radio service consolidation by licensees in the Manufacturers Radio Service, the Forest Products Radio Service, the Power Radio Service, the Petroleum Radio Service, the Motor Carrier Radio Service, the Railroad Radio Service, the Telephone Maintenance Radio Service or the Automobile Emergency Radio Service, the written concurrence of the coordinator for the industry-specific service, or the written concurrence of the licensee itself, must be obtained. Requests for concurrence must be responded to within 20 days of receipt of the request. The written request for concurrence shall advise the receiving party of the maximum 20 day response period. The coordinator's recommendation may include comments on technical factors such as power, antenna height and gain, terrain and other factors which may serve to minimize potential interference. In addition:

(2) On frequencies designated for coordination or concurrence by a specific frequency coordinator as specified in §§ 90.20(c)(3) and 90.35(b), and on frequencies designated for concurrence as specified in § 90.35(c)(63) or (66), the applicable frequency coordinator shall provide a written supporting statement in instances in which coordination or concurrence is denied. The supporting statement shall contain sufficient detail to permit discernment of the technical basis for the denial of concurrence. Concurrence may be denied only when a grant of the underlying application would have a demonstrable, material, adverse effect on safety.

* * *

11. Section 90.267 is amended by revising paragraphs (f), (f)(2), and (f)(3) to read as follows:

§ 90.267 Assignment and use of the frequencies in the band 450-470 MHz for low power use.

* * * * *

(f) Group D Frequencies. The Industrial/Business Pool frequencies in Group D are available on a coordinated basis, pursuant to §§ 90.35(b)(2) and 90.175(b). Central station alarm signaling on these frequencies are co-primary with regard to co-channel or adjacent channel base, mobile or data operations.

* * *

(2) ~~Unless concurrence is obtained in accordance with section 90.175(b) of this chapter from the Commission-certified frequency coordinator for frequencies designated for central station alarm operations,~~ Group D frequencies subject to § 90.35(c)(63) are limited to central station alarm use within the urban areas described in § 90.35(c)(63). Outside the urban areas described in § 90.35(c)(63), Group D frequencies subject to § 90.35(c)(63) are available for general Industrial/Business use on a coordinated basis, pursuant to § 90.35(b)(2) and § 90.175(b).

(3) ~~Unless concurrence is obtained in accordance with section 90.175(b) of this chapter from the Commission-certified frequency coordinator for frequencies designated for central station alarm operations,~~ Group D frequencies subject to § 90.35(c)(66) are limited to central station alarm use nationwide.

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Proposed Changes on Reconsideration:

90.35(c):

(63) This frequency may be used within the boundaries of urbanized areas of 200,000 or more population, defined in the United States Census of Population, 1960, vol. 1, table 23, page 1-50, only by persons rendering a central station commercial protection service within the service area of the radio station using the frequency and may be used only for communications pertaining to safety of life and property, and for maintenance or testing of the protection facilities. Central station commercial protection service is defined as an electrical protection and supervisory service rendered to the public from and by a central station accepted and certified by one or more of the recognized rating agencies, or the Underwriters Laboratories' (UL), or Factory Mutual System. Other stations in the Industrial/Business Pool may be licensed on this frequency without concurrence from the Commission-certified frequency coordinator for frequencies designated for central station alarm operations (central station alarm frequency coordinator),only when all base, mobile relay and control stations are located at least 120 km (75 miles) from the city center or centers of the specified urban areas of 200,000 or more population. With respect to combination urbanized areas containing more than one city, 120 km (75 mile) separation shall be maintained from each city center which is included in the urbanized area. The locations of centers of cities are determined from appendix, page 226, of the U.S. Commerce publication "Air Line Distance Between Cities in the United States." If concurrence is obtained in accordance with section 90.175(b) of this chapter from the central station alarm frequency coordinator, other stations in the Industrial/Business Pool may be licensed on the following frequencies at locations less than 120 km (75 miles) from the city center or centers of the specified urban areas of 200,000 or more population: 460.900, 465.900, 460.925, 465.925, 460.950, 465.950 MHz.

(64) Persons who render a central station commercial protection service are authorized to operate fixed stations on this frequency for the transmission of tone or impulse signals on a co-primary basis to base/mobile operations. Fixed stations may be licensed as mobiles. Fixed stations used for central station alarm operations may use antennas mounted not more than 6.1 meters (20 feet) above a man-made supporting structure, including antenna structure.

* * *

(66) This frequency may be assigned only to persons rendering a central station commercial protection service, which is defined in paragraph (c)(63) of this section, within the service area of the radio station using the frequency. If concurrence is obtained in accordance with section 90.175(b) of this chapter from the central station alarm frequency coordinator, other stations in the Industrial/Business Pool may be licensed on the following frequencies: 460.975, 465.975, 461.000, 466.000 MHz.

* * * * *

§ 90.175 Frequency coordinator requirements.

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(b) * * * (1) A statement is required from the applicable frequency coordinator as specified in §§ 90.20(c)(2) and 90.35(b) recommending the most appropriate frequency. In addition, for central station frequencies on which other stations in the Industrial/Business Pool may be licensed pursuant to § 90.35(c)(63) or (66), the written concurrence of the Commission-certified frequency coordinator for frequencies designated for central station alarm operations must be obtained. In addition, for frequencies above 150 MHz, if the interference contour of a proposed station would overlap the service contour of a station on a frequency formerly shared prior to radio service consolidation by licensees in the Manufacturers Radio Service, the Forest Products Radio Service, the Power Radio Service, the Petroleum Radio Service, the Motor Carrier Radio Service, the Railroad Radio Service, the Telephone Maintenance Radio Service or the Automobile Emergency Radio Service, the written concurrence of the coordinator for the industry-specific service, or the written concurrence of the licensee itself, must be obtained. Requests for concurrence must be responded to within 20 days of receipt of the request. The written request for concurrence shall advise the receiving party of the maximum 20 day response period. The coordinator's recommendation may include comments on technical factors such as power, antenna height and gain, terrain and other factors which may serve to minimize potential interference. In addition:

(2) On frequencies designated for coordination or concurrence by a specific frequency coordinator as specified in §§ 90.20(c)(3) and 90.35(b), and on frequencies designated for concurrence as specified in § 90.35(c)(63) or (66), the applicable frequency coordinator shall provide a written supporting statement in instances in which coordination or concurrence is denied. The supporting statement shall contain sufficient detail to permit discernment of the technical basis for the denial of concurrence. Concurrence may be denied only when a grant of the underlying application would have a demonstrable, material, adverse effect on safety.

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11. Section 90.267 is amended by revising paragraphs (f), (f)(2), and (f)(3) to read as follows:

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* * *

(2) Group D frequencies subject to § 90.35(c)(63) are limited to central station alarm use within the urban areas described in § 90.35(c)(63). Outside the urban areas described in § 90.35(c)(63), Group D frequencies subject to § 90.35(c)(63) are available for general Industrial/Business use on a coordinated basis, pursuant to § 90.35(b)(2) and § 90.175(b).

(3) Group D frequencies subject to § 90.35(c)(66) are limited to central station alarm use nationwide.

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